IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5046/2000

Mohd. Haroon Chaudhary & Ors. ...Petitioner through
Mr. Ravindra Sethi, Sr. Adv. with Mr. R.K. Ghawana & Mr. Puneet Sharma, Advs.

Versus

Union of India & Ors. ...Respondent through
Mr. Sanjay Poddar, Adv. for LAC
Mr. Rajiv Bansal, Adv. for DDA
Mr. B.B. Sawhney, Sr. Adv. with Mr. M.A. Siddiqui, Adv. for Jamia Millia Islamia.

Date of Hearing : May 09, 2007

Date of Decision : May 31, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE J.P. SINGH

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

1. The Petitioners have assailed the acquisition of their land pursuant to the following Orders dated 30.6.2000 passed by the

Hon. Lt. Governor of Delhi:

> "I have gone through the records and requirement of the Delhi Development Authority and the draft notification prepared by LAC.
>
> I am fully satisfied that the land at Okhla measuring 17-14 Bigha bearing Kh. Nos.34(5-09), 35(7-12), 46(4-13) is urgently required for a valid purpose, namely for Planned Development of Delhi (Master Plan of Jamial Milia Islamia) ... In view of the urgency of the scheme, I order that notifications Under section 4, 6 & 17 (1) of the Land Acquisition Act, 1894 be issued immediately".

2. The Notification dated 13.7.2000 inter alia states that "The Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of the section 17 of the said Act are applicable to this land and is further pleased under sub-section (4) of the said section to direct that all the provisions of Section 5(A) shall not apply".

3. The contention of Mr. Ravindra Sethi, learned Senior Counsel for the Petitioner, is that the draft Notification put up to the Hon. Lt. Governor as well as other notings on the file make it abundantly clear that the proposal of the Delhi Government was to invoke the powers contained in Section 17(4) of the Land Acquisition Act (LA Act for short). Mr. Sethi argues that since the

Hon. Lt. Governor has not made any reference to Section 17(4), but has instead mentioned Section 17(1) alone in his Order, the only inference that can be drawn is that he did not propose to invoke those provisions. It is also Mr. Sethi's contention that unless an Order specifically under Section 17(4) is passed, an opportunity to file Objections under Section 5-A of the LA Act must be given to the Petitioners either by virtue of their being owners, or occupiers or persons interested in the land sought to be acquired.

4. On behalf of the Respondents it has been stated that large tracts of land had been acquired in this very area by a previous Notification dated 4.4.1964, followed by a second Declaration dated 7.12.1966; followed by notices under Sections 9 and 10 dated 27.12.1992. These were with regard to Khasra Nos.34, 35 and 46. The owner of the land, the Delhi Simla Catholic Archdiocese, laid a challenge to these acquisition proceedings in CW No.150/1983. The acquisition, however, was found to be in consonance with the law in terms of the celebrated decision in *Roshanara Begum -vs- UOI*, AIR 1996 Delhi 206 and the petition was dismissed. However, due to the pendency of this litigation the acquisition process could not be completed. A Representation

was, therefore, made to the Hon. Lt. Governor by the Vice Chancellor, Jamia Millia Islamia (University) requesting that further action should be taken because the land was acquired for transferring it to Jamia Millia Islamia (University) but the same came in possession of unauthorised occupants (who are the petitioners herein). This led to the publication of the second Notification dated 13.7.2000 under Section 4, read with Section 17 of the LA Act which appears to have been published inter alia in the Hindustan Times on 18.7.2000. On the first date of hearing, on 5.9.2000, interim Orders were passed directing the maintenance of status quo as to the possession.

5. Mr. Poddar, learned counsel for the Land Acquisition Collector, has drawn our attention to ***Krishi Utpadan*** *Mandi Samiti, Muzaffarnagar(U.P.) -vs- Ratan Prakash Mangal*, AIR 1988 SC 1459 and *Union of India -vs-* ***Praveen Gupta***, (1997) 9 SCC 78 to buttress his argument that since a second Notification had been necessitated, after the first Notification was found to be in order, no further challenge could legitimately be raised. He has also underscored the fact that a reading of the Petition will disclose that the argument that is now sought to be raised was not pleaded viz. that an order specifically under Section 17(4)

should necessarily have been passed. In ***Praveen Gupta*** their Lordships had come to the conclusion that acquisition of land to ease traffic congestion in the walled city was unassailable. They also opined that the "decision on emergency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry under Section 5-A in exercise of power under Section 17(4)". The following passage from ***Krishi Utpadan*** has been heavily relied upon:

> 13. There seems to be no doubt with regard to the legal position that the report dated 20th January, 1981 submitted by the Land Acquisition Officer was not binding on the State Government and it was still open to continue the proceedings for acquisition of Plot No.289 notwithstanding the said report. The reason why in place of issuing a Notification under Section 6(1) of the Act in continuation of the Notification dated 26th October, 1978 under Section 4(1) fresh Notifications under Sections 4 and 6 had to be issued as also the reason for the delay in issuing the fresh Notifications have already been indicated above. As regards the submissions that Section 17(4) of the Act has been erroneously invoked in the fresh Notification under Section 4(1) dated 20th May, 1982 also and that inquiry under Section 5-A had again

to be made before issuing this Notification, suffice it to point out that once an inquiry under the said Section had already been made and the parties had been given full opportunity to substantiate their case in the said inquiry and the State Government was not inclined to agree with the report of the Land Acquisition Officer submitted in pursuance of that inquiry it would have been a futile exercise to repeat the whole performance again. After the issue of the earlier Notification dated 26th October, 1978 a period of nearly 3-1/2 years had expired when the fresh Notification dated 20th May, 1982 under Section 4 (1) was issued and apparently the necessity to acquire Plot No.289 during this period became more acute due to this delay. Further, as stated in the Notification dated 20th May, 1982 itself the urgency had become more imminent on account of the direction issued by this court on 2nd March, 1982 in Writ Petition No.1318 of 1982 filed by the traders challenging the Notification under Section 7(2)(b) of U.P. Act No.25 of 1964. Consequently, we find it difficult to hold that the opinion of the State Government that it was a fit case to invoke Section 17(4) of the Act was invalid on the ground that there was no basis or material in support of that opinion. We are further of the view that on the facts indicated above it is also not possible to hold that the Notification dated 20th May, 1982 had been issued by the State Government in colourable exercise of its power.

6. Mr. Sethi has argued that these decisions are of no avail to the Respondents since the arguments raised in the present

petitions are that Orders under Section 17(4) are essential, and this argument had not been raised earlier. Therefore, whether there was, in fact, urgency in the matter has not been assailed by the present Petitioners. The frequently quoted opinion of the House of Lords in ***Quinn*** *v. Leathem*, 1901 AC 495 : (1900-3) All ER Rep 1 is that of Lord Halsbury, namely, that "every judgment must be read as applicable to the particular facts proved or assumed to be proved .... The other is that a case is only an authority for what is actually decides". These quotations have been reiterated in *Goodyear India Ltd. -vs- State of Haryana*, (1990) 2 SCC 71 and *State of Orissa -vs- Sudhansu Sekhar Misra*, AIR 1968 SC 647. In the latter case, the Court explicitly opined that "a decision on a question which has not been argued cannot be treated as a precedent". Their Lordships, in turn, referred back to the previous opinion in *Rajput Ruda Meha -vs- State of Gujarat*, 1980 SC 1707 in which it had similarly been stated that where an issue has neither been raised nor argued any decision by the Court, even after 'pondering over the issue in depth', would not be a binding precedent. Similar observations have been made by the Constitution Bench in *Padma Sundara Rao -vs- State of T.N.*, 2002(3) SCC 533, as is evident from the following extract:

> 9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*, (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

We have carefully perused the Judgments in *Nandeshwar Prasad -vs- The State of U.P.,* [1964] 3 SCR 425, *Union of India -vs-* ***Mukesh Hans****,* (2004) 8 SCC 14 and *Union of India -vs- Krishan Lal Arneja*, AIR 2004 SC 3582 in order to ascertain whether it had been argued that a separate decision must be taken under Section 17(1) or (2) on the one hand, and Section 17(4) on the other; or that even if Section 17(1) or 17(2) are resorted to, Objections under Section 5-A must be invited and decided before an acquisition can be completed. Our research is that these contentions had not been raised. Therefore, the dictum in ***Quinn*** assumes great significance. We will nonetheless give due deference to all the observations made by the Apex Court, even though we find from the pleadings before us, that grounds

predicated on the above arguments have not been articulated in the petitions. Indubitably, these are legal contentions and we would be loathe to ignore them solely for the reason that they have not been pleaded. But this state of affairs has obviously been occasioned because of the views ventilated in ***Mukesh Hans***.

7. Mr. Sethi has also emphasised the fact that the controversy has been put to rest by the decision of three-Judge Bench in ***Mukesh Hans***. He has pointed out that the acquisition proceedings were held not to be legal even though they came in the form of a second Notification. Therefore the earlier decision in ***Krishi Utpadan*** to the effect that a new enquiry would be futile in the case of a second Notification of the same land is no longer binding.

8. We consider it appropriate to record all the arguments raised by the adversaries before us even though we do not propose to consider them for the simple reason that we feel it inappropriate to exercise the powers vested in us by virtue of Article 226 of the Constitution of India. In the previous writ proceedings (CW 2383/1983 and 150/1983), on 19.11.1983,

interim orders had been passed for maintenance of status quo as regards possession, construction and occupation. It has not been controverted that the present petitioners have acquired the land from Delhi Simla Catholic Archdiocese subsequent to the passing of these Orders. It has been explained that Delhi Simla Catholic Archdiocese had executed a General Power of Attorney authorising the Petitioners to enter into further transaction only on obtaining necessary permission. These permissions have not been obtained but the property has been illegally and unauthorisedly purchased, contrary to the Court Orders. The Petitioners are unlawfully obstructing the cause of Jamia Millia Islamia (University). The Petitioners have not approached this Court with clean hands. We, therefore, decline to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. The Writ Petition is dismissed.

(VIKRAMAJIT SEN)
JUDGE

May 31, 2007
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(J.P. SINGH)
JUDGE